

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company,)	
AT&T Communications of Illinois, Inc.)	
TCG Illinois, TCG Chicago, TCG St. Louis)	
CoreComm Illinois, Inc., WorldCom, Inc.)	
McLeodUSA Telecommunications Services, Inc.)	
XO Illinois, Inc., Northpoint Communications, Inc.)	
Rhythms Netconnection and Rhythms Links, Inc.)	
Sprint Communications L.P., Focal)	Docket No. 01-0120
Communications Corporation of Illinois, and)	On Second Remand
Gabriel Communications of Illinois, Inc.)	
)	
Petition for Resolution of Disputed Issues)	
Pursuant to Condition (30) of the)	
SBC/Ameritech Merger Order)	

PREPARED DIRECT TESTIMONY ON REMAND OF

JULIA A. REDMAN CARTER

ON BEHALF OF

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

MCLEODUSA EXHIBIT 2.0

December 14, 2005

OFFICIAL FILE
ICE 101-0120 01-0120
McLeod USA 20
2/23/06 Reporter PLW

TABLE OF CONTENTS

I.	WITNESS INTRODUCTION	1
II.	SUBJECT MATTER OF TESTIMONY	2
III.	TIME LINE OF PRIOR CONSIDERATION OF THE NEED FOR A WHOLESALE REMEDY PLAN AFTER OCTOBER 8, 2002	3
IV.	INFORMATION PRESENTED TO THE COMMISSION ON THE NEED FOR THE 01-0120 REMEDY PLAN TO BE IN EFFECT AFTER OCTOBER 8, 2002	10
V.	OTHER CONSIDERATIONS BEARING ON THE NEED FOR THE 01-0120 REMEDY PLAN TO CONTINUE IN EFFECT AFTER OCTOBER 8, 2002	24

I. WITNESS INTRODUCTION

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND PRESENT POSITION.

A. My name is Julia A. Redman Carter. My business address is 6400 C Street S.W., Cedar Rapids, Iowa 52406. I am Manager-Interconnection Negotiations for McLeodUSA Incorporated, the parent company to McLeodUSA Telecommunications Services, Inc. ("McLeodUSA").

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I obtained a Bachelor of Arts degree from Metropolitan State College, Denver, Colorado. My major was Radio and Television Production and Theatre Administration, with a minor in Business Management. I earned a Juris Doctorate from the University of Colorado-Boulder in 1996. From 1981 to 1992, I was employed by Mountain Bell/USWest in Denver, Colorado, in various positions. For the last five years of my employment, I was a Staff Manager-Methods and Procedures for Management Staffing throughout the company's 14-state region. I was employed by GC Services in Cedar Rapids, Iowa from 1997 through 1999 as an Operations Manager for its call center. I joined McLeodUSA as a program manager in 1999, and began my current position of Manager, Interconnection Negotiation in December 1999.

Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS MANAGER-INTERCONNECTION NEGOTIATIONS FOR MCLEODUSA INCORPORATED.

A. I am responsible for negotiating interconnection agreements ("ICA") and amendments with other carriers, for researching existing ICAs to determine obligations, duties,

remedies and so forth under the ICAs, and for developing and filing McLeodUSA's tariffs in the 25 states in which McLeodUSA offers local services.

II. SUBJECT MATER OF TESTIMONY

Q. WHAT IS THE SUBJECT MATTER OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am presenting information to support a decision by the Commission to continue the wholesale performance measurement and remedy plan of Illinois Bell Telephone Company ("SBC Illinois"), that was adopted by the Commission in this docket, in effect during the period from October 8, 2002 through December 30, 2002. The wholesale performance measurement and remedy plan that I am referring to was adopted by the Commission in its Order issued July 10, 2002, in this docket, and was attached to that Order as "Attachment A." I will refer to the remedy plan adopted in the July 10, 2002 Order as the "01-0120 Remedy Plan".

Q. WHAT DO YOU UNDERSTAND TO BE THE PURPOSE OF THIS REMAND PROCEEDING?

A. It is my understanding that the directions to the Commission from the Appellate Court in this remand proceeding are "to conduct a hearing and determine whether the remedy plan should have been extended beyond October 8, 2002, through December 30, 2002."

Q. WHAT IS THE SIGNIFICANCE OF THE PERIOD OCTOBER 8 THROUGH DECEMBER 30, 2002?

A. As the result of the Commission's Order in Docket 98-0555 approving the merger of SBC Communications and Ameritech in 1999, SBC Illinois was required to implement a wholesale performance measurement and remedy plan for the period through October 8,

2002. This docket was originally initiated to resolve disputed issues between SBC Illinois and competitive local exchange carriers ("CLECs"), including McLeodUSA, concerning the terms of the SBC Illinois remedy plan, and resulted in adoption of the 01-0120 Remedy Plan. The Commission's Order on Reopening in this docket, issued October 1, 2002, continued the 01-0120 Remedy Plan in effect after October 8, 2002. On December 30, 2002, the Commission issued an Order in Dockets 98-0252, 98-0335 & 00-0764 (Cons.) (the "SBC Alt Reg Case") in which the Commission concluded that the 01-0120 Remedy Plan should be incorporated as part of SBC's alternative regulation plan until such time as a different wholesale performance measurement and remedy plan was approved by the Commission in connection with its review of SBC Illinois' request for authority to provide in-region long distance services pursuant to Section 271 of the Telecommunications Act of 1996. Therefore, what is at issue in this proceeding, and as a result of the Appellate Court's direction to the Commission, is whether the 01-0120 Remedy Plan should have been continued in effect from October 8, 2002 through December 30, 2002.

**III. TIME LINE OF PRIOR CONSIDERATION OF THE NEED FOR
A WHOLESALE REMEDY PLAN AFTER OCTOBER 8, 2002**

**Q. WAS INFORMATION PRESENTED TO THE COMMISSION PRIOR TO THE
ISSUANCE OF ITS ORDER ON REOPENING IN THIS DOCKET
CONCERNING WHETHER THE 01-0120 REMEDY PLAN SHOULD
CONTINUE IN EFFECT AFTER OCTOBER 8, 2002?**

A. Yes. In the original proceedings in this docket, both Rod Cox, a witness on behalf of McLeodUSA, and Sam McClerren, a witness for the Commission Staff, presented

70 testimony concerning why the Docket 01-0120 Remedy Plan should continue in effect
71 beyond October 8, 2002. Additionally, in the SBC Alt Reg Case, Mr. Cox on behalf of
72 McLeodUSA and Mr. McClerren on behalf of Commission Staff, as well as other
73 witnesses, presented testimony concerning why the Docket 01-0120 Remedy Plan should
74 continue in effect beyond October 8, 2002. This testimony was presented in the SBC Alt
75 Reg Case in late 2000 and early 2001. I will discuss the information presented by these
76 witnesses in greater detail later in my testimony.

77 **Q. CAN YOU SUMMARIZE THE TIME LINE BY WHICH THE**
78 **IMPLEMENTATION AND DURATION OF THE 01-0120 REMEDY PLAN WAS**
79 **CONSIDERED IN COMMISSION PROCEEDINGS?**

80 **A.** Yes. McLeodUSA Exhibit 2.1 shows in chart form the dates of events in Commission
81 proceedings that I will describe.

82 As I mentioned, in the Commission's Order in Docket 98-0555, SBC Illinois was
83 required to implement a wholesale performance measurement and remedy plan. Initially,
84 SBC Illinois placed into effect in Illinois a wholesale remedy plan referred to as the
85 "Texas Plan." In the same time frame, negotiations commenced between SBC Illinois
86 and CLECs on the terms of a wholesale performance measurement and remedy plan for
87 Illinois. SBC Illinois and participating CLECs were able to reach substantial agreement
88 on the "performance measurement" aspect of the plan but not on the "remedy" portion of
89 the plan. As a result, this docket was initiated on February 5, 2001, by a petition filed by
90 SBC Illinois and a number of CLECs, including McLeodUSA, for the purpose of
91 resolving the disputed issues concerning the terms of the wholesale performance
92 measurement and remedy plan.

93 In 1998, the Commission had initiated the SBC Alt Reg Case to investigate and
94 review SBC's alternative regulation plan, which had originally been placed into effect in
95 1994, including determining whether the alternative regulation plan should continue in
96 effect and if so whether any modifications should be made to it. The SBC Alt Reg Case
97 was ongoing during 2000 and 2001. In late 2000 and early 2001, testimony was
98 presented by various witnesses in the SBC Alt Reg Case concerning the quality of SBC
99 Illinois' retail and wholesale services and whether a wholesale performance measurement
100 and remedy plan should be incorporated as part of SBC's alternative regulation plan.
101 That testimony addressed whether the wholesale performance measurement and remedy
102 plan that would be adopted in this proceeding should continue in effect after October 8,
103 2002. As I indicated, I will discuss this testimony in greater detail later in my testimony.
104 In addition, in briefs that were filed in the SBC Alt Reg Case during March and April
105 2001, several parties advocated that the wholesale performance measurement and remedy
106 plan should be incorporated into SBC's alternative regulation plan so that the remedy
107 plan would continue in effect beyond October 8, 2002. The "Hearing Examiner's
108 Proposed Order" in the SBC Alt Reg Case was issued on May 22, 2001. It did not
109 provide for incorporation of a wholesale performance measurement and remedy plan into
110 SBC's alternative regulation plan. In briefs on exceptions to the Proposed Order, filed
111 during June 2001, several parties, including McLeodUSA and Commission Staff, took
112 exception to this omission and urged the Commission, in its final order in the SBC Alt
113 Reg Case, to incorporate the wholesale performance measurements and the remedy plan
114 that would be adopted in Docket 01-0120 as part of SBC's alternative regulation plan and
115 thereby to continue the remedy plan in effect.

116 In this docket, prepared testimony was filed by the parties on various dates in July
117 and August of 2001. As I indicated, some of that testimony explained the need for the
118 wholesale performance measurement and remedy plan that was to be adopted in this
119 docket to continue in effect beyond October 8, 2002.

120 The subject of wholesale quality performance and remedies between carriers was
121 also the subject of a Commission rulemaking proceeding. Specifically, on August 8,
122 2001, the Commission initiated Docket 01-0539 as a rulemaking proceeding for the
123 purpose of establishing and implementing carrier to carrier wholesale service quality
124 rules and remedies to ensure the enforcement of those rules, as required by Section 13-
125 712(g) of the Public Utilities Act that had been enacted by the General Assembly and
126 signed into law in June 2001. The proceedings in Docket 01-0539 continued through
127 2002 and beyond and ultimately resulted in adoption of a regulation (83 Illinois
128 Administrative Code Part 731) in 2004.

129 On October 24, 2001, the Commission initiated Docket 01-0662 to investigate the
130 status of SBC Illinois' compliance with Section 271 of the Telecommunications Act, to
131 hold evidentiary hearings thereon, and to develop a comprehensive factual record for
132 purposes of the Commission's anticipated consultation with the Federal Communications
133 Commission ("FCC") in connection with SBC Illinois' application for authority pursuant
134 to Section 271 to provide in-region interLATA services in Illinois. In its Order Initiating
135 Investigation, the Commission stated that in prior Section 271 orders, the FCC had
136 "placed special emphasis on the [Bell Operating Company's] performance remedy plan."
137 The Commission stated that it "will fully investigate the performance remedy plan to

138 ensure that the local market remains open to competition and to guard against backsliding
139 following 271 approval.” (Order Initiating Investigation, p. 3.)

140 The proceedings in Docket 01-0662 continued during 2002 and resulted in
141 issuance of a Phase I Interim Order on Investigation on February 6, 2003, and a Final
142 Order on Investigation on May 13, 2003. As part of the investigation in Docket 01-0662,
143 SBC Illinois proposed, and the Commission considered, a wholesale performance
144 measurement and remedy plan for purposes of providing assurances that SBC Illinois
145 would not “backslide” in its compliance with the requirements of Section 271 after it
146 received the requested authority to provide long distance services under Section 271. On
147 September 24, 2002, Commission Staff filed a motion in Docket 01-0662 to dismiss
148 “Phase 1B” of that docket, which was to consider the wholesale remedy plan that had
149 been proposed by SBC Illinois for Section 271 purposes, and to require SBC Illinois to
150 specify whether it would accept and implement the 01-0120 Remedy Plan as its
151 wholesale remedy plan for Section 271 purposes. In its response to Staff’s motion, filed
152 October 11, 2002, SBC Illinois stated that it did not agree to adopt the 01-0120 Remedy
153 Plan as its wholesale remedy plan for Section 271 purposes.

154 In this docket, the Administrative Law Judges’ Proposed Order was issued on
155 January 22, 2002. The Proposed Order recommended adoption of a wholesale
156 performance measurement and remedy plan that differed from the Texas Plan in certain
157 respects. Prior to issuance of the final order in this docket, SBC Illinois, on June 7, 2002,
158 filed a “Motion to Abate, or in the Alternative to Defer Decision”, in which it requested
159 that the Commission abate this proceeding or defer a decision on adoption of a remedy
160 plan, due to the fact that Docket 01-0662 was in progress and would also result in

161 adoption of a wholesale performance measurement and remedy plan to be proposed in
162 that docket by SBC Illinois. SBC Illinois' Motion to Abate stated that in order to
163 eliminate the possibility that there would be a "gap" in wholesale remedies between
164 October 8, 2002, and the adoption of a wholesale performance measurement and remedy
165 plan in Docket 01-0662, SBC Illinois would continue the "Texas Plan" in effect beyond
166 October 8, 2002, until a wholesale performance measurement and remedy plan was
167 adopted in Docket 01-0662. The Commission denied SBC Illinois' Motion to Abate on
168 July 10, 2002.

169 Also on July 10, 2002, the Commission issued its final Order in this docket,
170 adopting the 01-0120 Remedy Plan. The 01-0120 Remedy Plan differed in several
171 respects from the Texas Plan. In the July 10, 2002 Order, the Commission stated that the
172 condition in the Commission's Order in Docket 98-0555 that required implementation of
173 a wholesale performance measurement and remedy plan would expire on October 8,
174 2002. (July 10, 2002 Order, p. 20.) The July 10, 2002 Order also stated that

175 We conclude, therefore, that unless otherwise directed by the Commission,
176 the Remedy Plan adopted pursuant to this Order shall serve as the basis for
177 the aforementioned "performance remedy plan" referenced by Ameritech
178 for Section 271 approval purposes. The Commission does not believe it is
179 in either its own interest or any of the parties' interest to re-litigate the
180 nuances of the Remedy Plan in the current Section 271 proceeding.
181 Therefore, the Commission wishes to clarify that any future reference (in
182 either concurrent or prospective dockets before the Commission) to a
183 Remedy Plan in place in Illinois, either voluntarily or pursuant to
184 Commission Order, shall mean the Remedy Plan adopted pursuant to this
185 Order. (July 10, 2002 Order, p. 20.)
186

187 On August 9, 2002, SBC Illinois filed an application for rehearing of the July 10,
188 2002 Order in this docket. In its application for rehearing, SBC took issue with language
189 in the July 10, 2002 Order (which I cited above) that, according to SBC Illinois, had the

190 effect of specifying that the 01-0120 Remedy Plan would continue in effect beyond
191 October 8, 2002. SBC Illinois also stated that to ensure there would be no "gap" in
192 wholesale remedy plans, it would continue the Texas Plan in effect until the Commission
193 completed its review of the wholesale performance measurement and remedy plan
194 offered in the Section 271 proceeding, Docket 01-0662. The Commission denied SBC
195 Illinois' application for rehearing on August 27, 2002.

196 On October 1, 2002, the Commission issued an Order on Reopening in this
197 docket. The Order on Reopening required SBC Illinois to keep the 01-0120 Remedy
198 Plan in effect beyond October 8, 2002.

199 On December 30, 2002, the Commission issued its final Order in the SBC Alt Reg
200 Case. In that Order, the Commission adopted the 01-0120 Remedy Plan as a component
201 of SBC Illinois' alternative regulation plan. However, the Commission stated that the 01-
202 0120 Remedy Plan would remain in effect only until such time as a wholesale
203 performance measure plan was approved by the Commission for Section 271 purposes.

204 On May 13, 2003, the Commission issued its Final Order on Investigation in
205 Docket 01-0662, the Section 271 investigation. That Order included adoption of a
206 modified wholesale performance measurement and remedy plan pursuant to the proposal
207 made by SBC Illinois in that docket. The adoption of the wholesale performance
208 measurement and remedy plan for Section 271 purposes in that Order effectively ended
209 the applicability of the 01-0120 Remedy Plan.

210Q. **IN YOUR DISCUSSION OF THE TIME LINE, YOU INDICATED THAT THE**
211 **HEARING EXAMINER'S PROPOSED ORDER IN THE SBC ALT REG CASE**
212 **WAS ISSUED ON MAY 22, 2001, AND THAT BRIEFS ON EXCEPTIONS WERE**

**FILED IN JUNE 2001. DO YOU KNOW WHY THE COMMISSION'S FINAL
ORDER IN THE SBC ALT REG CASE WAS NOT ISSUED UNTIL DECEMBER
30, 2002?**

No. There was some subsequent briefing during the second half of 2001 on the impacts on the alternative regulation plan, if any, of amendments to the Telecommunications Article of the Public Utilities Act enacted in June 2001, and the Commission held oral argument in the case in late January, 2002. However, from the perspective of the parties to the case, the SBC Alt Reg Case was ripe for issuance of a final Order by the Commission as early as July or August 2001, and certainly no later than February 2002, and issuance of the final Order could have occurred at any time thereafter.

**IV. INFORMATION PRESENTED TO THE COMMISSION ON
THE NEED FOR THE 01-0120 REMEDY PLAN
TO BE IN EFFECT AFTER OCTOBER 8, 2002**

**EARLIER IN YOUR TESTIMONY YOU STATED THAT IN THE SBC ALT REG
CASE, TESTIMONY WAS PRESENTED RELATING TO THE TOPIC OF
CONTINUING A WHOLESALE PERFORMANCE MEASUREMENT AND
REMEDY PLAN IN EFFECT AFTER OCTOBER 8, 2002. WHAT WITNESSES
PRESENTED TESTIMONY IN THE SBC ALT REG CASE ON THAT TOPIC?**

Testimony relating to this topic was presented in the SBC Alt Reg Case by Charlotte F. TerKeurst on behalf of the Governmental and Consumer Intervenors ("GCI", which consisted of the Illinois Attorney General, the Cook County State's Attorney's Office, the Citizens Utility Board and the City of Chicago), by Rod Cox on behalf of McLeodUSA, by Sam McClerren on behalf of Commission Staff, by Cate Hegstrom on behalf of

AT&T Communications of Illinois, Inc. ("AT&T")¹, and by Thomas O'Brien on behalf
of SBC Illinois.

Q. INFORMATION DID MS. TERKEURST, ON BEHALF OF GCI,
PRESENT ANYTHING TO THIS TOPIC?

A. Ms. TerKeurst submitted a number of pieces of direct testimony in the SBC At Reg
of Exhibits 1.0 and 2.0. GCI Exhibit 2.0 discussed SBC Illinois' service quality
record, and the impact of the current form of alternative regulation on incentives for
the company to provide good quality service. Ms. TerKeurst's testimony focused
principally on SBC Illinois' retail service quality, but also discussed SBC Illinois'
wholesale service quality and the relationship between wholesale service quality and the
quality of retail service received by GIECs' retail customers. Ms. TerKeurst summarized
her testimony by stating that SBC Illinois' retail service quality was declining and
inadequate. (GCI Exhibit 2.0, pp. 4-6, 10-12). She recommended that if alternative
regulation is continued for SBC Illinois, the Commission should continue to apply
pressure on SBC Illinois to immediately and promptly resolve the extensive service
quality problem. She also stated that a detailed review of SBC Illinois' service
quality should be a critical part of the Commission's evaluation of the terms
and conditions of the alternative regulation plan, and that the service quality mechanisms
if the alternative regulation plan should be strengthened in a number of respects. (GCI
Exhibit 2.0, p. 17).

¹ This is the former AT&T entity that was participating in Docket 01-0120 as a GIEC. AT&T's parent company has subsequently merged with SBC Illinois' parent company. It is my understanding that this recently-merged entity is operating under the AT&T name.

256 [REDACTED] SBC Illinois
257 [REDACTED] quantity, its wholesale service quantity and, ultimately, the service quality
258 experienced by retail customers of CLECs that obtain wholesale service, unbundled
259 network elements ("UNE") and collocation from SBC Illinois. She recommended a
260 program in which SBC Illinois would provide credits to retail customers, customers
261 purchasing wholesale, UNE, interconnection and transport and termination services, and
262 interexchange carriers purchasing access services, for SBC Illinois' failure to meet
263 service quality standards. (GCI Exhibit 2.0, p. 60.) She testified as follows:

264 As Ameritech Illinois allows its service quality to decline, the
265 ability of interexchange carriers, carriers purchasing wholesale services,
266 and UNE-based providers to offer service is also hampered. For example,
267 if service is interrupted for extended periods of time, a customer
268 experiences trouble on the line, or service installation is delayed. As a
269 wholesale carrier's customers are harmed when Ameritech Illinois' service
270 quality declines because Ameritech Illinois continues to be the underlying
271 service providers for those customers. Thus, service degradation for
272 retail customers is mirrored by service degradation to other carriers,
273 whether or not competitive LEC service quality measures are explicitly
274 included in the service quality incentive mechanisms. For these reasons,
275 Ameritech Illinois should compensate interexchange carriers, purchasers
276 of wholesale services, and UNE-based providers for declines in its service
277 quality. (GCI Exhibit 2.0, pp. 68-69.)

278
279 Ms. TerKeurst also testified that

280 CLECs' service quality is largely dependent on Ameritech Illinois' service
281 quality in the case of resale and UNE-based service because Ameritech
282 Illinois continues to be the sole provider of the underlying network
283 service. As a result, CLEC customers may encounter service quality
284 problems comparable to those encountered by Ameritech Illinois
285 retail customers, through the fault of the CLEC. (GCI Exhibit 2.0, p. 93.)

286
287 Ms. TerKeurst recommended that a list of critical service quality measures regarding the
288 quality of services that SBC Illinois provides to CLECs should be developed along with

proposed standards and financial consequences, for the Commission's consideration for inclusion in SBC Illinois' universal regulation program. (GCI Exhibit 2.0, p. 65.)

McLeodUSA Exhibit 2.2 consists of excerpts from Ms. Ferkeurst's direct testimony that I have referred to from the SBC All Reg Case.

WHAT INFORMATION DID MR. COX ON BEHALF OF McLEODUSA
PRESENT CONCERNING TO THIS TOPIC?

Mr. Cox was Senior Manager of Customer Support at McLeodUSA at the time he submitted testimony in the SBC All Reg Case. (Mr. Cox is being employed by McLeodUSA.) Mr. Cox testified that SBC Illinois' service quality performance had been bad during most of 2000, particularly during the period from January through September. He testified that SBC Illinois' service quality performance subsequently improved but was still an acceptable level. He testified that there were still many service quality deficiencies, and that both wholesale and retail customers continued to experience unacceptable levels of service quality. He testified that the quality of service continued to be negatively impacted by the less than adequate quality of service provided by SBC. (McLeodUSA Exhibit 1.0, p. 3.)

Mr. Cox testified that he agreed with Ms. Ferkeurst's testimony that a system of compensation is needed by the state to provide incentives for SBC Illinois to maintain acceptable service quality. He testified that poor service quality from SBC Illinois has been a barrier to McLeodUSA in competing for business. Therefore, he agreed with Ms. Ferkeurst that additional performance measurement requirements should be imposed on SBC Illinois along with meaningful penalties for inadequate performance. (McLeodUSA Exhibit 1.0, p. 4.) Mr. Cox testified that poor wholesale

312 [REDACTED] Illinois can harm a CLEC in at least four ways. First, it often delays
313 the CLEC's ability to recover its costs because the CLEC cannot bill its own customers
314 for services it cannot deliver while waiting for SBC to pay its bill. Second, it imposes
315 additional personnel costs on the CLEC including the staffing needed to deal with
316 customers with service complaints and the staffing needed to work with SBC Illinois to
317 resolve the service problem. Third, poor wholesale service exposes the CLEC to
318 potential liability for harm to its customer, which in turn can result in a lawsuit for the
319 CLEC. Fourth, poor wholesale service can damage the CLEC's reputation. Mr. Cox
320 testified that for a new competitor trying to establish itself in the market and to begin
321 recovering the costs associated with the capital investments it has made to enter the
322 market, poor wholesale service can be devastating, and eventually thwart the CLEC's
323 ability to gain a foothold in the local market. (McLeodUSA Exhibit 1.0, p. 7.)

324 Mr. Cox testified that McLeodUSA is dependent on SBC Illinois for the facilities
325 that it needs to provide service, which means that McLeodUSA, as well as
326 other CLECs, are dependent on their primary competitor, SBC Illinois, as their primary
327 wholesale supplier of essential facilities and services. He testified that this creates a
328 situation that is not a competitive relationship by SBC Illinois. He testified that
329 "performance measures", or performance measures that compare the quality of service that SBC
330 Illinois provides to its wholesale customers to the quality of service that SBC
331 Illinois provides to its retail customers, provide critical information that can be used by SBC
332 Illinois to favor itself over its competitors. He testified that establishment of such party
333 measures, coupled with strong remedies for inadequate performance by SBC Illinois, can
334 constitute the kind of anticompetitive discrimination that SBC Illinois might otherwise

335 [REDACTED] He testified that there is also a need for minimum service quality
336 standards, because CLECs are also concerned about the quality of wholesale
337 service. He testified that poor performance in wholesale service harms the CLEC and
338 its customers as well. He testified that [REDACTED] by SBC Illinois to a
339 CLEC gets passed on to the CLEC's customers and that customer inevitably blames
340 the CLEC, not the wholesale supplier that actually caused the problem. He testified that
341 poor wholesale service harms the CLEC's customers and damages the CLEC's ability
342 to function in the marketplace. (McLeodUSA Exhibit 1.0, pp. 6-7)

343 Mr. Cox testified that a set of performance measures, with both minimum
344 performance measures and parity requirements, should be imposed on SBC Illinois in the
345 near future. He testified that the Commission use its expertise to should determine
346 whether this should occur in the SBC Ant-Reg Case or in another proceeding.
347 (McLeodUSA Exhibit 1.0, pp. 10-11.)

348 McLeodUSA Exhibit 2.0 consists of Mr. Cox's testimony that I have referred to
349 from the SBC Ant-Reg Case.

350Q. WHAT INFORMATION DID MR. MCLEODREN ON BEHALF OF THE
351 COMMISSION STAFF PROVIDE RELATING TO THIS TOPIC?

352A. Mr. McLeodren submitted direct testimony in which he testified that the ability of most
353 CLECs to provide telecommunications service requires that they purchase access to some
354 or all of an ILEC's facilities, and that therefore the quality of service that an ILEC
355 provides to a CLEC directly impacts the quality of service a CLEC provides to its own
356 end user customers. He testified that an ILEC should provide wholesale service to a
357 CLEC in the same manner that the ILEC would provide service to its own end user

358 ~~system, that is, on a nondiscriminatory basis, thereby providing the CLEC a~~
359 ~~meaningful opportunity to compete with the ILEC. He also testified that if parity of~~
360 ~~service is not possible, an appropriate benchmark measurement must be developed to~~
361 ~~provide CLECs a meaningful opportunity to compete. (ICC Staff Exhibit 8.0, p. 14.)~~

362 ~~Mr. McCrellen testified that in its order approving the SBC Ameritech merger~~
363 ~~the Commission ordered a process to develop and institute wholesale performance~~
364 ~~remedy proceedings. He testified that this process was proceeding through a~~
365 ~~collaborative effort among SBC Illinois, CLECs and the Commission staff. (ICC Staff~~
366 ~~Exhibit 8.0, p. 16.) He testified that "Section 20" as adopted in the merger order was~~
367 ~~initially subject to a three-year time limit that would expire in October 2002. He~~
368 ~~recommended that the Commission initiate a wholesale service quality plan that would~~
369 ~~clearly survive the three-year limitation. (ICC Staff Exhibit 8.0, p. 17.) He~~
370 ~~recommended that the wholesale service quality plan use the same "business as usual"~~
371 ~~remedy plans for any performance problems as defined and included in the collaborative effort~~
372 ~~and subsequent court proceedings. (ICC Staff Exhibit 8.0, p. 18.) He recommended~~
373 ~~that the wholesale performance measures should have effect as long as SBC Illinois has~~
374 ~~an alternative regulation plan and as long as it is necessary for the Commission to~~
375 ~~ascertain that SBC/Illinois is unable to provide discriminatory service to~~
376 ~~CLECs." (ICC Staff Exhibit 8.0, p. 19.)~~

377 ~~Mr. McCrellen subsequently filed rebuttal testimony in the SBC Alt Reg~~
378 ~~Case. In that rebuttal testimony, he testified that SBC Illinois, in its testimony in~~
379 ~~response to Mr. McCrellen's direct testimony, had not responded to his recommendation~~
380 ~~to include wholesale performance measures in the alternative regulation plan. He also~~

381 testified that in response to a staff data request, SBC Illinois had indicated that no
382 wholesale service quality issues should be incorporated into a wholesale service quality
383 component in the alternative regulation plan, because it would be inappropriate and
384 duplicative of the consideration of wholesale service quality in connection with merger
385 Condition 30. (ICC Staff Exhibit 22.0, p. 15.) Mr. McClernon testified that providing the
386 correct incentive for SBC Illinois to provide adequate service quality to CLECs is critical
387 to competition. He testified that there continued to be a need for a wholesale service
388 quality plan that would survive the three-year limit that appeared to apply to merger
389 Condition 30. He testified that there was a need to be certain that a wholesale service
390 quality program would clearly survive the three-year limit that may apply to Condition
391 30, and that this was critical to the development of competition in Illinois. He testified
392 that his recommendation was not duplicative or inappropriate because it did not overlap
393 with the timing of the wholesale service quality program of Condition 30. (ICC Staff
394 Exhibit 22.0, pp. 15-16.)

395 Mr. McClernon testified that he now recommended that the complete set of
396 performance measures developed in response to merger Condition 30, combined with the
397 results of the formal proceedings to resolve the remedy plan issues, should be used
398 starting in October 2002. (ICC Staff Exhibit 22.0, p. 16.) He testified that with all the
399 systems in place and all formal proceedings completed, it would be more administratively
400 burdensome to develop a new wholesale remedy plan than to simply continue with the
401 wholesale service quality program that would exist in September 2002. (ICC Staff
402 Exhibit 22.0, p. 17.)

403 McLeodUSA Exhibit 2.1 consists of excerpts from Mr. McClaren's
404 testimony that I have referred to from the SBC Alt Reg Case. McLeodUSA Exhibit 2.2
405 consists of excerpts from Mr. McClaren's rebuttal testimony that I have referred to from
406 the SBC Alt Reg Case.

407Q. WHAT INFORMATION DID MS. HEGSTROM ON BEHALF OF AT&T
408 COMMUNICATIONS OF ILLINOIS PROVIDE RELATING TO THIS TOPIC.

409A. Ms. Hegstrom testified that in merger Condition 30, the Commission had required SBC
410 Illinois to implement a set of wholesale performance measurements, and a related
411 performance remedy plan to be used where SBC Illinois provided substandard service to
412 CLECs. She testified that Condition 30 expires three years after the filing date of the
413 merger in October 2002. (AT&T Exhibit I.0, p. 10.) She testified, in agreement with
414 Ms. TerKeurst, that end-user customers purchasing long distance service that is resold
415 would be affected by poor SBC Illinois service quality just as much as SBC Illinois' own
416 retail customers. She testified that it is essential, as Mr. McClaren had recommended,
417 that all performance measures and the related remedy plan be in effect pursuant to the
418 merger. If the merger scheduled to transpire in October 2002 should continue without
419 interruption. She testified that she agreed with Mr. McClaren's recommendation that the
420 Commission should order this continuation by including the wholesale service quality
421 plan as part of the alternative regulation plan. (AT&T Exhibit I.0, p. 11.)

422 McLeodUSA Exhibit 2.3 consists of excerpts from Ms. Hegstrom's testimony that
423 I have referred to from the SBC Alt Reg Case.

424 Q. DID A WITNESS ON BEHALF OF SBC ILLINOIS RESPOND TO THE
425 TESTIMONY AND RECOMMENDATIONS OF MR. COX AND MR.
426 MCGILVERING

427A. Yes, Mr. J. Thomas O'Brien, SBC Illinois Executive Director - Regulatory Affairs,
428 submitted supplemental surrebuttal testimony in response to the proposals of Commission
429 Staff writer J. M. McGilvering and McLeodUSA witness Mr. Cox. Mr. O'Brien testified
430 that the collaborative process and related formal proceeding for resolution of the
431 plan issues, Docket 01-0120, were more appropriate proceedings for determining the
432 quality for wholesale service. (Amertech III, Exhibit 3.4, pp. 21-22.)

433 McLeodUSA Exhibit 2.7 consists of excerpts from Mr. O'Brien's testimony that I
434 have referred to from the SBC III Reg. Case.

435Q. IN THE BRIEFING PERIOD OF THE SBC III REG CASE, DID PARTIES
436 CONTEND THAT THE COMMISSION REQUIRE THAT A
437 WHOLESALE SERVICE QUALITY PLAN FOR SBC ILLINOIS CONTINUE IN
438 EFFECT AFTER OCTOBER 8, 2002?

439A. For example, Commission Staff recommended in both its initial order and its reply
440 briefing in the SBC III Reg Case that the Commission should institute a wholesale service
441 quality plan that would start in October 2002. Staff recommended that this wholesale
442 service quality plan should use the same basic standards and methodology for key
443 performance measurements developed by the participants in the collaborative process
444 relating to the Reg. Condition 36 and any resulting formal proceedings. Staff
445 recommended that this wholesale performance measurement plan for SBC Illinois should
446 be in effect for as long as SBC Illinois has an alternative regulation plan and for as

447 [REDACTED] necessary for the Commission to determine that SBC Illinois is not providing
448 [REDACTED] discriminatory service to CLECS. (Brief of Staff, pp. 47-50; Reply Brief of Staff
449 [REDACTED] pp. 10-17.)

450 At the time of the SBC Alt. Reg. Case, concurred with Staff,
451 [REDACTED] that an wholesale performance measurements and the remedy plan in
452 [REDACTED] Condition 20 should survive without interruption following October
453 2002. AT&T stated that this action was essential if service quality was to be maintained
454 (AT&T Initial Brief, pp. 17-18.)

455 [REDACTED], in its brief on exceptions to the Hearing Commission's Proposed
456 Order in the SBC Alt. Reg. Case, stated that the Commission should be responsive to the
457 wholesale performance measurement and remedy plan adopted in Docket 01-0120 that SBC's
458 alternative regulation plan, and should retain the wholesale performance measurements and
459 [REDACTED] that has long been in effect for SBC Illinois. McLeodUSA
460 supported Staff's recommendation that the wholesale service quality plan should use the
461 same business rules and standards as in Docket 01-0120, and should survive the
462 three-year limit on Condition 20. (McLeodUSA Brief on Exceptions, pp. 5-16; Staff, in
463 its brief on exceptions, reiterated its recommendation. (SBC Brief on Exceptions,
464 pp. 16-21.)

465Q. WHAT WAS THE COMMISSION'S DETERMINATION ON THIS TOPIC IN
466 ITS FINAL ORDER IN THE SBC ALT REG CASE?

467A. The Commission's final order in the SBC Alt. Reg. Case was not issued until December
468 30, 2002. The Commission concluded that the wholesale performance measurement and
469 remedy plan that was adopted in Docket 01-0120 should remain in effect until

wholesale performance measure plan for SBC Illinois for Section 271 purposes
approved by the Commission: "[T]he Commission deems the 01-0120 Remedy Plan
effective up to and until a wholesale performance measure plan for Section 271 purposes
is approved by the Commission." The Commission stated that "The Commission has
conclusively determined that the lack of competitive pressure on Ameritech has been a
long-standing problem; that "[t]he Commission . . . views it imperative to the public
interest, as well as the success of alternative regulation that Ameritech provide quality
wholesale service; that the Commission fails to see how this goal can be realized absent
a sufficient wholesale performance remedy plan in place"; and that "[i]t is imperative that
competitive carriers know exactly what wholesale remedial plan is available to them at
any time, because "[n]othing is more detrimental to developing competition
than uncertainty in the regulatory marketplace." (Order in SBC AL Reg C,
December 28, 2001, p. 2057)

**ENDING THE ORIGINAL HEARINGS IN THIS DOCKET, WAS TESTIMONY
PRESENTED BY AMERICA WITH THERE WAS A NEED FOR THE
WHOLESALE PERFORMANCE MEASUREMENT AND REMEDY PLAN
ESTABLISHED IN THIS DOCKET TO CONTINUE IN EFFECT AFTER
OCTOBER 8, 2001.**

Yes, Mr. Cox testified as McLeodUSA presented testimony on this topic. (CLEC
Exhibit 5.0) Mr. Cox provided testimony very similar to his testimony in the SBC AL
case, but somewhat more detailed, as to why there was a need for a wholesale
performance measurement and remedy plan for SBC Illinois that included both party
requirements and minimum performance requirements. He testified that an effective

remedy plan was critical to foster competition in Illinois. He testified that
SBC/Amerelec had steadfastly refused to provide M&T/USF anything resembling a
remedy plan for inadequate wholesale performance until merger Condition 30 was
adopted. He warned that the Commission should clearly indicate that the remedy plan
appears in this docket does not expire when merger Condition 30 expires. He testified
that M&T/USF's experience with another ILEC in another region showed that when
the ILEC's poor performance was not substantiated by payment directly to the SBC, an
ILEC fearing that consequences from the SBC that does not have the same
reputation. He testified that for approximately the previous two years, the ILEC had
been required to pay significant dollars to M&T/USF to ensure the ILEC's service
quality was adequate, and that over this period of time the other ILEC's service quality
had improved and had performed as responsibly as a wholesale service
provider.

In addition, Mr. McCreery on behalf of Commission Staff recommended that the
wholesale performance measures established in this docket should clearly survive the
three-year limit of merger Condition 30. (ICC Staff Exhibit 1.00.) He testified that this
case would determine how quickly competition develops and whether there will be a
competitive telecommunications environment in the near future. He testified that
competition depends, in no small part, on the successful provisioning of wholesale
service quality, and that successful provisioning of wholesale service quality requires
appropriate and meaningful remedies in the event of non-performance. Mr. McCreery
recommended that the Commission order that the wholesale service quality remedy plan
continue after October 2002, clearly surviving the three-year limitation that may apply to

[REDACTED] Condition 50. He recommended that [REDACTED] from [REDACTED] should
be [REDACTED]. [REDACTED] SBC will [REDACTED]
necessary for the Commission to ascertain that SBC will [REDACTED]
discriminatory service to CLECs.

IN ADDITION TO THE TESTIMONIES OF MR. COX AND MR. MCCLELLAN
IN THIS DOCKET, WAS THERE OTHER TESTIMONY THAT RELATED TO
THIS MATTER ON THE SUBJECT OF THE REMOVAL OF THE REMAIN IN EFFECT
REMOVED OCTOBER 8, 2002?

Other witnesses on behalf of CLECs in this docket, including Michael Kaib, Karen Moore and John D. Jackson, as well as Mr. Cox, testified in support of the remedy plan presented by a group of CLECs including McLeodUSA in opposition to continuation of the Texas Plan. They testified to the fact that the CLEC-proposed remedy plan was superior to the SBC Illinois Texas Plan in terms of providing adequate incentives to SBC Illinois to provide acceptable quality wholesale service to CLECs and adequate compensation to CLECs if SBC Illinois provided substandard quality that led to complaints from CLECs or not in compliance with the terms of the remedy plan. The Commission did not adopt the CLEC-proposed remedy plan, the 01-126 Remedy Plan adopted by the Commission incorporated modifications that had been advocated by SBC Illinois. Recall that in this docket, SBC Illinois agreed to keep the Texas Plan in effect until October 8, 2002, until the Commission's Section 271 review was completed. Mr. Kaib, Mr. Jackson and Mr. Moore did not expressly testify that the 01-126 Remedy Plan should remain in effect after October 8, 2002, their

testimony in this docket generally supported the need for the wholesale performance
remedy plan. It is not clear why this docket is to provide support for SBC Illinois and
if a wholesale performance measure and remedy plan were to remain in effect after
October 8, 2002, it should not be the Texas Plan, but the 01-0120 Remedy Plan.

WHAT IS THE IMPORTANCE OF THE TESTIMONY AND ARGUMENTS
FROM THE SBC ILLINOIS CASE AND THE ORIGINAL HEARINGS IN THIS
DOCKET THAT YOU HAVE DESCRIBED ABOVE ON THE ISSUE TO BE
ADDRESSED IN THIS REMAND PROCEEDING?

The testimony and arguments from SBC Illinois during the original hearings in
this docket that I have indicated that SBC Illinois presented to the Commission
information presented to the Commission which would support conclusions that (1)
there was a need for a wholesale performance measurement and remedy plan for SBC
Illinois to be in effect after October 8, 2002, and (2) if a wholesale performance
measurement and remedy plan for SBC Illinois were to be in effect after October 8, 2002,
that plan should be the 01-0120 Remedy Plan.

**V. OTHER CONSIDERATIONS BEARING ON THE NEED FOR THE
01-0120 REMEDY PLAN TO CONTINUE IN EFFECT AFTER OCTOBER 8, 2002**

SBC ILLINOIS HAS INDICATED THAT CONTINUATION OF THE 01-0120
REMEDY PLAN DURING THE PERIOD OCTOBER THROUGH DECEMBER,
2002, WAS NOT WARRANTED BECAUSE SBC ILLINOIS' WHOLESALE
SERVICE QUALITY PERFORMANCE HAD IMPROVED CONSIDERABLY BY
THEN AS COMPARED TO EARLIER PERIODS. DOES MCLEODUSA HAVE
ANY COMMENTS ON THIS POSITION?

563 A. McLeodUSA acknowledges that SBC Illinois' wholesale service quality performance
564 improved generally over time during the period that the 01-0120 Remedy Plan was under
565 consideration and in effect, i.e., from 2000 until mid-2003. (Although, as Mr. Cox
566 testified in the original hearings in this docket, some aspects of SBC Illinois' wholesale
567 service quality actually deteriorated from 2000 into 2001.) However, this information
568 does not support a conclusion that the 01-0120 Remedy Plan was no longer needed
569 during the last three months of 2002.

570 First, even if, in hindsight, SBC Illinois' wholesale service quality performance
571 for the fourth quarter of 2002 were determined to be satisfactory, this would not have
572 been known until after the end of that period.

573 Second, in the Commission's Section 271 investigation, Docket 01-0662, which
574 was initiated in October 2001, the Commission was investigating SBC Illinois'
575 compliance with the "competitive checklist" requirements of Section 271(c) including
576 SBC Illinois' ability to meet or exceed, on a consistent basis, wholesale performance
577 measures relating to its Operation Support Systems ("OSS") in accordance with the
578 Illinois Master Test Plan; and to collect, maintain and report, on a reliable basis,
579 performance metrics data on its wholesale service quality. The evaluations of SBC
580 Illinois' OSS and of its ability to reliably collect, maintain and report performance
581 metrics data were being performed by an independent third-party reviewer, BearingPoint.
582 As of the fourth quarter of 2002, SBC Illinois had not yet succeeded in demonstrating, to
583 the extent necessary to obtain a favorable Section 271 recommendation from the
584 Commission, that it fulfilled all the requirements of the Section 271 competitive
585 checklist, that its OSS had achieved the performance levels specified by the Illinois

586 Master Test Plan or that it could collect, maintain and report wholesale performance
587 metrics data on a reliable basis. Those determinations were not finally made until the
588 Commission's final Order in Docket 01-0662 issued in May 2003. In fact, in the first
589 half of 2003, the parties (including Commission Staff) were still arguing in Docket 01-
590 0662 over whether SBC Illinois had demonstrated that it could collect, maintain and
591 report wholesale service quality performance data on a reliable basis – obviously a
592 threshold requirement to have confidence in the accuracy of SBC Illinois' reported
593 wholesale service quality performance measurement results. The parties (including Staff)
594 were also still disputing whether SBC Illinois' wholesale service quality had achieved
595 designated performance levels with respect to the OSS functions of ordering,
596 provisioning, maintenance and repair, and billing.

597 ~~For example, on February 21, 2003, Commission Staff witnesses, including~~
598 ~~Jeffrey Hoagg, Sam McClellan and Nancy Weber, filed affidavits in Docket 01-0662~~
599 ~~stating among other things that (1) SBC Illinois' OSS, as reported by BearingPoint in its~~
600 ~~independent third party review, were not sufficient with respect to the ordering,~~
601 ~~provisioning and maintenance and repair functions; (2) significant areas of wholesale~~
602 ~~performance improvement were still required by SBC Illinois; (3) SBC Illinois~~
603 ~~performance measurement data, as evaluated by BearingPoint, was not sufficiently~~
604 ~~reliable and did not adequately demonstrate that SBC Illinois had satisfied all~~
605 ~~requirements of the Section 271 checklist; this deficiency also seriously compromised the~~
606 ~~effectiveness of any performance remedy plan; (4) the Commission could not be assured that~~
607 ~~SBC Illinois' performance on key measurements will not "backslide" if SBC Illinois~~
608 ~~were granted Section 271 approval; and (5) SBC Illinois' proposed remedy plan would~~

not adequately prevent backsliding in a post-Section 271 environment, and SBC Illinois should be required to adopt the 01-0120 Remedy Plan for purposes of its Section 271 application. CLECs, including McLeodUSA, made similar points in affidavits and comments filed in Docket 01-0662 at that time. I am not citing these positions for the purpose of showing that the Staff witnesses and CLECs were 100% correct in everything they stated in their February 2002 affidavits and comments, but rather to show that as late as February 2002, there was still substantial dispute as to whether SBC Illinois wholesale service quality had reached adequate levels and as to whether SBC Illinois wholesale service quality performance warranted transitioning from the 01-0120 Remedy Plan to the wholesale performance remedy plan that SBC Illinois was proposing for Section 271 purposes. Certainly, based on these open issues, as of October 2002 SBC Illinois had not yet demonstrated that its wholesale service quality performance had improved to the point where the 01-0120 Remedy Plan could be terminated and the "anti-backsliding" performance remedy plan that SBC Illinois was proposing for Section 271 purposes could be adopted.

Third, as I mentioned earlier, in June 2002, prior to the issuance of the final Order in this docket, SBC Illinois filed its Motion to Dismiss in the Alternative Dispute Decision, which was based in part on the argument that SBC Illinois' wholesale service quality performance had improved significantly since 2000-2001, and that adoption of the remedy plan in Docket 01-0120 was no longer necessary. However, the Commission denied the SBC Illinois motion.

Fourth, in mid-2002, SBC Illinois was not demonstrating that there should be no wholesale performance measurement and remedy plan in effect after October 2002.

632 Rather, as I discussed earlier in my testimony, SBC Illinois recognized that there were
633 concerns about the possible occurrence of a gap period, with no wholesale remedy plan in
634 effect. Accordingly, SBC proposed that the Texas Plan be in effect from October 8,
635 2002, until the Commission approved a wholesale remedy plan for Section 371 purposes.
636 However, the Commission rejected the Texas Plan in favor of the 01-0120 Remedy Plan
637 in its final Order in Docket 01-0120. Having made that decision in its July 18, 2002
638 Order, it was reasonable for the Commission, when faced with the possibility of a gap
639 period with no wholesale performance measurement and remedy plan in effect, to
640 conclude that the 01-0120 Remedy Plan should be in effect during the gap period, rather
641 than the Texas Plan.

642 Fifth, there is a chicken-and-egg aspect to SBC Illinois' argument. During the
643 fourth quarter of 2002, the 01-0120 Remedy Plan was in fact in effect, SBC Illinois was
644 making remedy payments to CLECs and to the State of Illinois based on the performance
645 measurement and remedy provisions of the 01-0120 Remedy Plan, and SBC Illinois had
646 no way of knowing if its appeals of the final Order and the Order on Reopening in
647 Docket 01-0120 would be successful, either with respect to the substantive components
648 of the 01-0120 Remedy Plan that SBC Illinois was challenging on appeal or with respect
649 to the extension of the 01-0120 Remedy Plan beyond October 8, 2002. There is no way
650 for the Commission to determine in hindsight if SBC Illinois' wholesale service quality
651 performance would have been as good as it was during the fourth quarter of 2002 if SBC
652 Illinois had not in fact been operating under the 01-0120 Remedy Plan during that period.
653 Given that SBC Illinois was making remedy payments to CLECs in accordance with the

01-0120 Remedy Plan, it is reasonable to conclude that the remedy portion of that plan strongly incentivized SBC Illinois to provide good quality wholesale services.

Sixth, in December 2002, at the end of the fourth quarter of 2002, the Commission elected to specify that the 01-0120 Remedy Plan should continue in effect into 2003, until such time as an alternative wholesale performance measurement and remedy plan was approved in Docket 01-0662 for Section 271 purposes. The need for the 01-0120 Remedy Plan did not end in October 2002 and then reappear at the end December 2002. (Of course, as of December 30, 2002, the Commission was operating under the assumption that the 01-0120 Remedy Plan had been in effect during the fourth quarter of 2002, which in fact was the case.)

AS OF OCTOBER 2002, WERE THERE OTHER ALTERNATIVES FOR THE COMMISSION TO ADDRESS THE GAP PERIOD OTHER THAN CONTINUING THE 01-0120 REMEDY PLAN IN EFFECT AS IT DID IN THE ORDER ON REOPENING IN THIS DOCKET?

There may have been some alternatives in terms of other proceedings, but it appears to McLeodUSA that these other alternatives were not viable at the time. One alternative would have been to issue the final order in the SBC Alt Reg Case, adopting the 01-0120 Remedy Plan as part of SBC's alternative regulation plan, by October 8, 2002. As I discussed earlier, for reasons internal to the Commission, it was not able to issue this order until December 30, 2002, even though from the perspective of the parties the case appeared to be ripe for issuance of the final order no later than February 2002.

A second alternative related to the fact that Section 13-712(g) of the Public Utilities Act, enacted in June 2001, directed the Commission to "establish and implement

677 carrier to carrier wholesale service quality rules and establish remedies to ensure
678 enforcement of those rules", and the Commission had initiated Docket 01-0539 as a
679 rulemaking proceeding to comply with that mandate. However, the rulemaking in
680 Docket 01-0539 was far from completion as of October 2002 (the "First Notice Order"
681 was not issued until January 2004) and in fact was not completed until August 2004.

682 A final alternative was the Section 271 investigation, Docket 01-0662, in which
683 SBC Illinois had proposed a modified wholesale remedy plan for Section 271 purposes.
684 In fact, by its motion filed in Docket 01-0662 on September 24, 2002, Commission Staff
685 sought to obtain SBC Illinois' agreement that the 01-0120 Remedy Plan would be
686 adopted as the wholesale performance measurement and remedy plan for Section 271
687 purposes, but this proposal was not agreed to by SBC Illinois. In its response to the Staff
688 motion, filed October 11, 2002, SBC Illinois stated that it would not agree to adopt the
689 01-0120 Remedy Plan as its wholesale remedy plan for Section 271 purposes (although
690 SBC Illinois did state in that document that "it is apparent that the Commission is
691 determined to impose the Docket 01-0120 Order on Ameritech Illinois beyond October 8,
692 regardless of the legal constraints on its authority to do so"). Further, the Section 271
693 docket was not near completion in October 2002 time frame because testing of SBC
694 Illinois' OSS, which were used to process CLECs' orders, and evaluation of SBC
695 Illinois' performance metrics data collection and reporting, were still in progress. As I
696 described earlier, as of October 2002 the Commission had not yet concluded that SBC
697 Illinois satisfied the Section 271(c) competitive checklist with respect to its OSS
698 functions or that the performance of its OSS and or its wholesale performance metrics
699 data collection and reporting satisfied targeted criteria.

700 In light of these circumstances, it was reasonable for the Commission to deal with
701 the possibility of a gap period with no wholesale performance measurement and remedy
702 plan in effect by deciding that the 01-120 Remedy Plan should continue in effect after
703 October 2002.

704Q. **DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY ON**
705 **REMAND?**

706A. Yes, it does.